Why Gulf investors are keen on Kenya

The East African gateway is growing steadily and UAE firms including Al Futtaim and Dubai Islamic Bank are leading the path.

A nation on the rise *Kenya's economic growth is projected to grow by 5.9 percent in 2016 and 6.1 percent in 2017, according to the World Bank.*

IN RECENT YEARS, KENYA HAS SEEN a big increase in investment activity and deal interest from investors in the Middle East, notably in the agribusiness, aviation, construction, health, mining, financial services, hospitality, ICT, manufacturing, retail and transport infrastructure sectors.

Recent investors from the Middle East include Al Futtaim Motors, Majid Al Futtaim Hypermarkets and Dubai Islamic Bank.

Research from the Economist Intelligence Unit notes that between 2005 and 2014, Gulf firms injected at least \$9.3bn in foreign direct investment into sub-Saharan Africa, with a further \$2.7bn in the first half of 2015. Kenya has been one of the biggest beneficiaries of these investments.

The country has long been the preferred entry point for Middle Eastern investors considering East Africa. Kenya facilitates access to the East African common market that includes Rwanda, Tanzania, Uganda, Burundi, and South Sudan, as well easier access to Ethiopia and the Democratic Republic of the Congo (DRC).

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The Kenyan market is considered to be mature, with a growing middle class, the availability of skilled labour and an ideal geographical location. Companies in Kenya are well respected in terms of the scale of their businesses and ability to compete. The financial and telecommunications sectors are also robust and sophisticated; transport infrastructure and links to the main centres in Africa and beyond are good; and the country has a stable and mature financial services sector. In addition, there is ready availability of specialist advisors to guide the deal process.

Active sectors in the private equity and mergers and acquisitions (M&A) space include fast moving consumer goods (FMCG), financial services (especially banks, microfinance companies and insurance companies), retail and manufacturing. The real estate and energy sectors have also seen significant activity.

The activity in the real estate sector is partly because Kenya's rising middle class is expressing a preference for good quality property and also because the demand for commercial and retail property is fuelling an increase in international companies setting up in Kenya. Our view, however, is that the real estate sector might experience a slight downturn in the near future because of oversupply in the market.

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African operations *Al Futtaim Group's acquisition of Kenya's CMC Holdings boosted its presence in East Africa.*

Plan *MAF eyes expansion in Kenya.*

The banking sector is also probably going to experience some turbulence. With the recent financial market volatility and two major banks being placed under receivership, tighter regulation and some fallout in this sector is to be expected. The negative effect is likely to be felt by the smaller banks in particular and may result in some consolidation. Early last year, Dubai Islamic Bank received approval in principle from the Central Bank of Kenya to open a subsidiary in the country.

While there is a limited amount of activity in the healthcare sector at present, there is a notable increase in demand for private healthcare clinics and pharmaceutical products. This means that we are likely to see more deals in this sector, with Middle East investors playing a role.

Finance *DIB is looking to tap into East African markets, including Kenya.*

Sectors showing a slowdown in M&A activity include natural resources, especially oil and gas, as well as mining infrastructure. The slowdown is also affecting those involved in exploration, as well as construction companies supporting these sectors.

The regulation around competition law and the recent massive overhaul of Kenya's legislative framework has deterred some investors. However, most of those chasing a good deal are willing to work around complex regulations in order to get the opportunities.

In late 2015, the Attorney General began to bring into operation provisions of the new Companies Act. Kenyan company law is heavily based on the principles of English company statute law and common law, as handed down through judge-made decisions of the courts. The new Act preserves this heritage in the English system. However, the sheer scale of the legislation will have the effect of making statutory provisions out of former common law doctrines such as directors' common law and equitable duties, rights of shareholders to protections against unfair actions of directors and controlling shareholders, offences of fraudulent trading and many others. The new Act will not annul or invalidate the actions, rights and powers of existing companies incorporated in or already registered in Kenya. There will thus not be an overnight need to re-register or re-write the rules.

Not all deals are successful and large M&A deals tend to fail because of macro shocks that can happen at any stage during a deal's lifespan.

Fluctuations in Kenya's exchange rate (albeit relatively mild compared to other African countries), for example, can make investors nervous. Corruption also remains a problem.

We also sometimes see high expectations from the seller because there is so much investment interest in the country, leading to unrealistic valuations. We are seeing changes, however, as buyers and sellers become more realistic.

Investors from the Middle East can mitigate their transaction risks by ensuring their deals are structured correctly; consulting local legal, tax and competition law advisers; having a policy in place to identify and swiftly deal with corruption; and planning their exits before they begin.

** Coulson Harney Advocates is a member of the Bowman Gilfillan Africa Group, which includes 400 lawyers in six countries.*